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10 Improvement District Property Owners
11 Association, Inc.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ADRIAN RISKIN,

Petitioner,

vs.

HISTORIC CORE BUSINESS
IMPROVEMENT DISTRICT
PROPERTY OWNERS
ASSOCIATION, INC.,

Respondent.

CASE NO. BS BS174718

(Hon. James C. Chalfant, Dept. 85)

RESPONDENT'S OPPOSITION TO
PETITIONER'S MOTION FOR AWARD
OF ATTORNEY'S FEES AND COSTS;
SUPPORTING DECLARATION OF
JEFFREY BRIGGS

Date: May 12, 2020

Time: 1:30 pm

Dept: 85

Respondent Historic Core Business Improvement District Property Owners Association, Inc. ("Respondent") respectfully submits this opposition to Petitioner Adrian Riskin's ("Petitioner") motion for attorney's fees and costs following the limited grant of his petition under the Public Records Act.

I

SUMMARY OF ARGUMENT

The petition sought relief as to five public record requests, and as to the timing of Respondent's future public record request responses. It was filed nearly three months after Respondent concluded its production of records in response to Petitioner's many requests, and Petitioner had not previously asked any questions about the response or made any effort whatsoever to obtain the relief requested in the petition. Petitioner accordingly cannot meet his burden to prove that litigation was necessary to obtain additional records and thus to recover attorney fees. Litigation to the tune of nearly \$80,000 is simply unconscionable.

As to the relief Petitioner sought with respect to responses to future requests, Petitioner and his counsel knew that Respondent's counsel had agreed to such timing relief without litigation in other cases. Nevertheless, Petitioner made no effort to obtain such an agreement with this Respondent. The petition was not the catalyst for the timing agreement reached here.

Similarly, when the petition first raised questions about exemptions claimed by Respondent prior to obtaining counsel, Respondent's counsel readily confirmed that no records had been withheld on the basis of the exemptions, withdrew the privacy claim that had been used to redact some email addresses from previously produced records, and then produced the unredacted records both in hard copy and in their electronic native format to the extent they still existed. The same is true of Petitioner's request for additional emails from one Respondent email sender ("Streetplus") that had been overlooked—the few additional records were produced as soon as the issue was raised. Petitioner cannot prove that the litigation was the catalyst for these post-litigation responses because he got what he wanted when he first simply raised the issues.

As for the matters remaining for trial, Petitioner was *denied* relief in all but two partial respects. The additional search ordered by the Court with respect to one

1 of the five records requests in issue resulted in *no additional records* being found
2 because they no longer exist, a result Respondent predicted and Petitioner has not
3 now questioned. This confirms that Respondent's original search was reasonably
4 thorough and complete, just as the Court concluded in regard to the four other
5 requests in issue. In regard to the "Mailchimp" relief granted, this was an "email"
6 issue never raised by Petitioner with this Respondent—including in the petition
7 itself—or with any other of the numerous public record request respondents of
8 which Respondent's counsel is well aware. When it *did* arise in this action,
9 Respondent explained it had only distribution lists and copies of announcements
10 and produced them, but it is a stretch to refer to any such records as "emails" in
11 Respondent's possession responsive to the subject requests.

12 Thus, Petitioner is disingenuous when he claims that he prevailed at every
13 step of this proceeding. He in fact ultimately "prevailed" only as to the
14 questionable "Mailchimp" issue, and in that regard he received only what non-
15 email records Respondent always said was all it had. Petitioner's request for 100
16 percent of his exorbitant attorney's fees in light of the great extent to which his
17 Petition failed is an affront, and only confirms that his real purpose in Public
18 Records Act requests and litigation is to cost respondent non-profit business
19 improvement districts so much time and money as to put them out of business. The
20 Court cannot condone this weaponization of the Public Records Act, cannot
21 condone Petitioner's failure to seek *any* relief prior to litigation, and is well within
22 its discretion to award Petitioner minimal costs and attorney fees as a reflection of
23 the genuinely negligible results of his Petition. Any other result would give
24 Petitioner a victory enormously disproportionate to his litigation achievement and
25 consistent only with his *real* goal of destroying Respondent. Any fee award beyond
26 a nominal amount only will have the effect of encouraging more unnecessary
27 "shoot first and ask questions later" litigation.

1 II

2 ALL OF RESPONDENT’S SEARCHES PROVED ADEQUATE

3 The Public Records Act provides that courts “shall award court costs and
4 *reasonable* attorney fees to the plaintiff should the plaintiff prevail in litigation”
5 under the Act. Cal. Gov. Code §6259(d)(emphasis added). Courts have discretion
6 to decide “what it means to ‘prevail in litigation,’” and what constitutes “reasonable”
7 fees. Belth v. Garamendi, 283 Cal.Rptr. 829, 232 Cal App 3d 896, 901 (1991).

8 The only relief ordered by the Court after trial was with respect to (a) an
9 additional search in connection with only one of five public record requests “to
10 ensure that no records are missing” from what was already produced, and to
11 provide certain of the records previously produced in hard copy “in native
12 electronic format,” and (b) the Mailchimp “emails.” As to (a), the additional search
13 resulted in the production of exactly *zero* additional records, a result unquestioned
14 by Petitioner and confirming that all of Respondent’s searches were adequate.
15 Briggs Decl., ¶8, Ex. B. Thus, excluding the Mailchimp “emails” for the moment
16 (discussed *infra*), it was *Respondent* that ultimately prevailed in establishing its
17 compliance with the Public Records Act in respect of not just four, but in fact *all*
18 *five* of Petitioner’s requests at issue in the Court’s Writ. Petitioner is not entitled to
19 attorney fees in respect of such substantial matters in which he did not prevail in
20 terms of securing additional records. See Los Angeles Times v. Alameda Corridor
21 Transp. Auth., 88 Cal.App.4th 1381, 1391- 1392 (2001)(a PRA plaintiff could
22 obtain documents as a result of litigation “that are so minimal or insignificant as to
23 justify a finding that the plaintiff did not prevail.”)

24 III

25 FEES MAY BE RECOVERED ONLY WHEN PETITIONER PROVES
26 LITIGATION WAS NECESSARY

27 Petitioner contends he “prevailed” because of several matters resolved by
28 agreement short of the matters ultimately tried by the Court. But the petitioner in a

1 Public Records Act case bears the burden of establishing that the litigation was a
2 “necessity or a cause” in obtaining any records or other relief in order to recover
3 fees and costs. This is a burden Petitioner cannot meet.

4 In Motorola Communication & Electronics, Inc v. Department of General
5 Services, 64 Cal.Rptr.2d 477, 55 Cal App.4th 1340 (1997), attorney fees were
6 denied where records were produced after litigation but not as a *direct result* of it.
7 Records were produced but Petitioner thought there were more and asked for a
8 further response, saying a writ petition would follow if nothing further was
9 provided. Petitioner was told that one more record was found, but it was withheld
10 as exempt. Petitioner sued and ultimately received additional records. Yet fees
11 were denied because the lawsuit was not the “motivating factor” for the ultimate
12 production—citing numerous other cases where fees were denied because the
13 evidence showed the records would have been produced anyway, the court found
14 that the evidence supported responding party’s good faith effort to find the records
15 and produce them both before and during the litigation. The court favorably cited
16 Alliance for Responsible CFC Policy, Inc. v. Costle, 631 F.Supp. 1469, 1470
17 (D.D.C.1986), an FOIA case in which the court held that plaintiff “has not borne its
18 burden of establishing necessity or causation.”

19 Similarly, in Rogers v. Superior Court, 23 Cal.Rptr.2d 412, 19 Cal App.4th
20 469 (1993), the court found that substantial evidence supported the view that
21 documents were produced as a result of a search instituted prior to filing of the
22 complaint.

23 Contrast those cases with the principal case cited by Petitioner, Fontana
24 Police Dept. v. Villegas-Banuelos, 88 Cal.Rptr.2d 641, 74 Cal.App.4th 1249 (Cal.
25 App. 1999). In Fontana, the respondent refused to produce responsive records
26 without the requester’s agreement to certain conditions. The court held that records
27 would not have been provided without those untenable conditions absent the
28 lawsuit’s “motivation.” In another case relied on by Petitioner, LA. Times v. The

1 Alameda Corridor Trans. Auth., 107 Cal.Rptr.2d 29, 88 Cal.App.4th 1381 (Cal.
2 App. 2001), the responding party did not dispute that litigation was required in
3 order for it to provide the requested public record it had claimed was exempt. And
4 in Belth v. Garamendi (1991) 232 Cal.App.3d 896, 900, 283 Cal.Rptr. 829), the
5 court found the responding party could have sought the consent it claimed it needed
6 from a third party to produce a particular record—consent it requested and received
7 only after the lawsuit was filed—as part of its original response to the request. In
8 all these cases, the requesting party had made a follow-up request prior to filing a
9 lawsuit, *giving the responding party a chance to comply without the need for*
10 *litigation*. That is an option Petitioner chose not to give Respondent in this case.

11 Petitioner’s request for fees, to the extent it relies on Respondent’s pre-trial
12 agreement to an amended timetable for responding to future requests, and on
13 Respondent’s provision of unredacted and electronic records originally produced,
14 essentially seeks to punish Respondent for trying to resolve things short of trial
15 without having given it the chance to resolve the matters short of any litigation at
16 all.¹ Briggs Decl., ¶¶4 and 5. The same is true with respect to a few additional
17 emails to and from one of Respondent’s vendors, Streetplus, which Respondent
18 promptly provided when asked, explaining that such sender had been overlooked in
19 the original search due to its temporary use of a Respondent email address. *Id.*, ¶6.
20 Had Petitioner asked about that one particular email sender at any time prior to the
21 litigation, Respondent would have complied just as it did when it came up after the
22 litigation. *Id.* In all these instances as to which Petitioner claims a “victory”
23 entitling him to attorney fees, the litigation simply was neither necessary to the
24 production of those few additional emails nor the cause of that production—all
25 Petitioner had to do was inquire, but he chose not to. *Id.*, ¶3.

26 Petitioner’s fee motion recognizes that his petition needs to have been the

27 ¹ Petitioner’s request for an Order requiring Respondent to meet non-statutory requirements in responding to future
28 requests is beyond the power of the Court to grant. Respondent’s agreement to an amended timetable for future
requests as a voluntary accommodation to Petitioner is now being used by Petitioner to punish Respondent.

1 “catalyst” for the release of records to support any attorney fee award. (Petitioner’s
2 Motion at p. 3.) In the absence of any pre-litigation effort to raise an objection to a
3 responding party’s production of public records, or even a question, a requester
4 cannot bear his burden to show that litigation was either necessary to get the
5 requested records or the cause of getting same. Here, Petitioner offers no reason for
6 not having asked about the subject responses before filing this suit, and
7 Respondent’s agreement when those issues were raised proves that the litigation, at
8 least as to those matters, was neither necessary nor the cause of any relief.

9 It also is important to acknowledge the enormous breadth of Petitioner’s
10 requests—among other things, “all emails” to or from a number of parties over a
11 period of years—as well as the fact that attorney fees are available to a *responding*
12 party only if the petition is “clearly frivolous.” Govt. Code §6259(d). If a
13 requesting party can sue and recover attorney fees every time a few additional
14 records are found in response to a broad request after litigation is commenced,
15 Public Records Act litigation becomes little more than a game of “gotcha” in which
16 expensive attorney fees and costs are a risk-free reward for requesters filing suit
17 first and asking questions later—risk free because the production of just one
18 additional record renders a “clearly frivolous” finding impossible. The “necessity
19 or cause” condition to an award of attorney fees in Public Records Act litigation
20 must be understood to require the requester to seek to resolve issues short of
21 litigation—any other interpretation simply encourages lottery litigation.

22 IV

23 THE ONLY MAILCHIMP RECORDS RESPONDENT EVER HAD ARE NOT 24 IN FACT “EMAILS”

25 Petitioner’s records requests mainly sought “emails” by and between
26 Respondent and others, including anyone with a city of Los Angeles email address.
27 During Petitioner’s deposition of Respondent, Petitioner asked for the first time
28 about “emails” sent by a list-distributor called “Mailchimp.” Briggs Decl., ¶6.

1 Respondent acknowledged it had not searched for any such “emails” because it did
2 not consider the announcements sent by Mailchimp to be an “email” at all, or at
3 least not one it sent. Respondent contended at trial that it does not receive copies of
4 the messages sent by Mailchimp and has reasonable access only to lists of
5 recipients and copies of the announcements sent. The Court ordered Respondent to
6 produce *those* records, and it did so. Briggs Decl., ¶8 and Ex. B.

7 The Mailchimp records produced by Respondent simply are not “emails.”
8 They are lists of people who have asked to receive announcements from
9 Respondent, and copies of announcements Respondent sent to Mailchimp for
10 distribution. A Public Records Act responding party has a duty to disclose only
11 those records it retains. Consolidated Irrigation Dist. v. Superior Court (2012) 205
12 Cal.App.4th 697, 708 (duty to disclose requires proof that the record is “in the
13 possession of the agency”) Of course, if a CPRA respondent no longer has a record
14 at all, or in a particular format, the Court cannot compel its production. *See* Civ.
15 Code, §§ 3530 (“that which does not exist is to be regarded as if it did not exist”)
16 and 3531 (“The law never requires impossibilities”). It is not at all “bizarre,” as
17 Petitioner claims, that Respondent never searched for any Mailchimp “emails,” but
18 even when it did, the only records it has are not, in fact, “emails” at all.

19 That said, Respondent had no issue with providing the lists and
20 announcement copies; it contended only that any such production should not end up
21 as a basis for an attorney fee award since the actual Mailchimp records to which
22 Respondent has access were not specifically requested. Had Petitioner asked about
23 Mailchimp records prior to the litigation, he would have received exactly what he
24 eventually did receive—but once again, Petitioner never gave Respondent a chance
25 to respond to that inquiry short of litigation in which attorney fees were the
26 endgame. What *is* “bizarre” is that if Petitioner really considered Mailchimp
27 distributions to be “emails” responsive to his many Public Records Act requests, he
28 never has specified those kinds of “emails” in any of his requests to this or any

1 other responding party, nor raised that issue in his detailed Petition in this case, nor
2 has raised that issue with any other party, ever, in other litigation over whether
3 email records had sufficiently been produced. Briggs Decl., ¶7.

4 In short, the Mailchimp issue was contrived by Petitioner only after this
5 litigation was commenced, and now, as Respondent predicted, is being used to
6 support an attorney fee award despite the fact that the only Mailchimp records
7 Respondent has are not, in fact, responsive “emails” at all.

8 V

9 THE COURT HAS DISCRETION TO APPORTION FEES IN ACCORDANCE
10 WITH THE RESULTS OBTAINED

11 “California courts have long held that trial courts
12 have broad discretion in determining the amount of
13 a reasonable attorney's fee award. This determination
14 is necessarily ad hoc and must be resolved on the
15 particular circumstances of each case.” In exercising
16 its discretion, the trial court may accordingly “consider
17 all of the facts and the entire procedural history of the
18 case in setting the amount of a reasonable attorney's fee
19 award.”

20 Bernardi v. County of Monterey, supra, 167 Cal.App.4th 1379, 1398, 84
21 Cal.Rptr.3d 754, 766 (2008)[citations omitted].

22 The entire premise of the Petition was that Respondent had failed to do an
23 adequate search in response to five separate public records requests (containing
24 numerous subparts). The Court rejected this fundamental premise of Petitioner's
25 action except in respect of one request—which resulted in no additional records
26 being found—and in respect of the Mailchimp records which really are not
27 responsive “emails” at all. As for the matters to which Respondent agreed prior to
28 trial, none had been raised prior to the litigation and thus Respondent was given no

1 chance to resolve them outside the threat of an attorney fee award. Briggs Decl., ¶9.

2 Thus, to the extent Petitioner is the “prevailing party” at all, it is in very
3 minimal respects, and the Court should exercise its discretion to apportion any fee
4 award accordingly. An award of anything more than a small fraction of what
5 Petitioner seeks only will encourage Petitioner to continue his blunderbuss serial
6 Public Records Act requests and to file more litigation without any effort to resolve
7 disputes outside the courthouse.

8 VI

9 PETITIONER’S COUNSEL’S RATE AND TIME ARE UNJUSTIFIED BY THE 10 MINIMAL RESULTS OBTAINED

11 Petitioner’s counsel’s \$740 hourly rate claim is absurd. Respondent’s
12 counsel’s hourly rate for this case is \$250, a third of Petitioner’s counsel’s request,
13 and yet Respondent’s counsel’s 39 years of experience is far more than twice the 16
14 years of Petitioner’s counsel (Briggs Decl., ¶¶11-13)—it makes one wonder who is
15 the *real* “public interest” lawyer in this case. Furthermore, the legal issues were not
16 complex, *Respondent* prevailed against Petitioner’s main claims that its searches
17 were insufficient, and the remaining issues would have been resolved without court
18 intervention if Petitioner simply had made an attempt to do so. Almost every hour
19 of work claimed by Petitioner’s counsel could have been avoided by a mere phone
20 call, and as to the rest, *Respondent* prevailed. Petitioner claims no great public
21 interest achievement, has made no new law (outside of the potential for his
22 exorbitant fee request!), and to compare his counsel’s efforts in this case to the civil
23 rights cases cited in the allegedly hourly rate-supporting declarations—not one of
24 which claims any knowledge whatsoever about this case—is worthy of note only
25 for its chutzpah.²

26
27 ² Petitioner’s offer to settle the attorney fee motion was made well before Respondent had completed its obligations
28 under the Writ—which then resulted in no additional records being produced save for the Mailchimp records, which
clearly are not even “emails.” Petitioner’s counsel made it clear that the minimal offer Respondent might be willing
to make as a result would not be acceptable. Briggs Decl., ¶10.

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VII
CONCLUSION

Petitioner’s website proves he uses the Public Records Act to cost business improvement districts time and money so as to put them out of business:

And finally, it turns out that ~~my victims~~ the objects of my attention, both BIDs and City, have become a whole lot more stubborn about handing over the goods

Briggs Decl., par. 2, Ex A (deletion in original).

Awarding this Petitioner fees without consideration for his litigation’s minimal success at an hourly rate that should make a true “public interest” lawyer blush would give Petitioner what he actually wanted in the first place—a way to cost Respondent substantial money, in the form of its own fees and costs and, he hoped, his own.

Respondent urges this Court not to perpetuate Petitioner’s victimization of at least this Respondent by rewarding his unnecessary litigation. His fee application should be reduced to a small fraction in proportion to the small measure of his very limited “success” in the action, if he can be said to have prevailed at all.

Dated: April 13, 2020

Respectfully submitted,

JEFFREY C. BRIGGS
BRIGGS LAW OFFICE

/Jeffrey C. Briggs/
Jeffrey C. Briggs
Attorney for Respondent Historic Core
Business Improvement District Property
Owners Association, Inc.

DECLARATION OF JEFFREY C. BRIGGS

1
2 1. I am an attorney duly licensed to practice in California since 1981 and I
3 am counsel for Respondent in this matter. I have served as counsel for Respondent
4 in connection with responding to Public Record Act requests and similar matters
5 since the third quarter of 2017. I represent or have represented some 14 other
6 Business Improvement Districts (“BIDs”) in regard to Petitioner’s hundreds of
7 Public Records requests since 2014. These entities often are very small, have few if
8 any employees (several are entirely volunteer), and operate on very tight budgets.
9 They are funded by a self-imposed tax assessment on district property owners, are
10 privately operated, do not use public money, and are very different from the sort of
11 “public agencies” to which the Public Records Act usually is applied.

12 2. Exhibit A attached hereto contains true copies of articles from Petitioner’s
13 website describing recipients of his CPRA requests as his “victims” and
14 acknowledging that he uses CPRA requests as a “tactic” to drain BID resources,
15 discourage volunteer and vendor BID participation, and to potentially cause them to
16 breach their city contracts, thus leading to their disestablishment. Petitioner has
17 testified in another case in which I was involved that he is the author of all articles
18 on his website regardless of which pseudonym he uses for attribution.

19 3. I began assisting Respondent in connection with Petitioner’s Public
20 Record requests well after Respondent had responded to Petitioner’s January 27,
21 2017 request, the first of the five requests at issue in this action. Respondent was at
22 that time attending to Petitioner’s subsequent requests, the responses to all of which
23 were concluded in May, 2018. While expressing frustration with the delays in
24 Respondent’s responses, at no time prior to the Petition filed in August 2018 did
25 Petitioner question the substance of Respondent’s prior responses to any of the five
26 requests that became the subject of his Petition.

27 4. While assisting various other BIDs in responding to Petitioner’s serial
28 Public Records Act requests, Petitioner often expressed to me his frustration over

1 the time it took for Business Improvement Districts (and others) to respond. This
2 resulted in agreements by two BIDs I represented to provide responsive records on
3 an amended timeframe agreeable to Petitioner. This same amended timeframe was
4 that to which Respondent readily stipulated in this case when asked to do so.
5 Respondent would have agreed to that amended timeframe had Petitioner asked for
6 same prior to commencing litigation—he did not give Respondent that chance.

7 5. Prior to my engagement by Respondent, Respondent had provided
8 Petitioner with a written response to his January 2017 request in which a number of
9 exemptions were asserted. Respondent also had provided records in response to
10 that request, including some in hard copy with various email addresses and similar
11 information redacted in accordance with the “privacy” exemption Respondent
12 previously asserted. Petitioner never questioned those redactions or any of the
13 other asserted exemptions prior to filing his Petition herein. After his petition was
14 filed and the exemption issue then was raised for the very first time, I informed
15 Petitioner that no records had been withheld from Respondent’s record productions
16 based on those exemptions other than as to the redacted email addresses. I provided
17 all available unredacted hard copies of those records and any electronic “native
18 format” records then still available. Had Petitioner or his counsel simply requested
19 those explanations and materials prior to filing the Petition, the result would have
20 been the same. But neither even asked about those exemptions and redactions or
21 for electronic copies prior to commencing this litigation.

22 6. At Respondent’s deposition, Petitioner for the first time raised a question
23 about whether HCBID had searched for “emails” sent by a vendor, Streetplus, using
24 a Respondent email address, and emails sent by its third-party announcement and
25 newsletter vendor, MailChimp. Respondent explained that the minimal use of its
26 email by Streetplus had been overlooked, and the few additional records promptly
27 were provided, just as they would have been had the question been asked prior to
28 litigation. I offered to further discuss the Mailchimp issue in exchange for equal

1 consideration of Petitioner's mis-use of Respondent's old domain name to re-direct
2 HCBID traffic to his own website critical of HCBID, and Petitioner's mis-use of a
3 Respondent staffer's photo as his own Twitter identifier. I never received any
4 response.

5 7. In assisting some 15 BIDs in responding to more than 100 of Petitioner's
6 serial Public Records Act requests since 2014, I can attest that virtually every one
7 has included a request for emails, and in fact that usually has been the primary if
8 not the exclusive request. Almost every request has included emails from the
9 subject BID to anyone working for the city of Los Angeles, the responses to which
10 invariably include BID announcements in one form or another (including some
11 announcements actually directly emailed by Respondent that it produced prior to
12 this action). Furthermore, Petitioner's requests are very specific in terms of the
13 electronic format in which he seeks responsive productions: Petitioner often has
14 argued with me in detail about his need for "meta data" embedded in the electronic
15 versions of records; he contends that each recipient of a responsive email has a
16 uniquely distinct version of the same substantive email because of that "meta data"
17 even though the substance of each such email is exactly the same; and he has
18 provided instruction on how to transfer emails to him in a manner that will preserve
19 such details from a wide variety of email systems. He therefore has shown deep
20 knowledge of email systems. Furthermore, he has signed up for Respondent's
21 announcement list and thus has received Respondent's announcements via its
22 Mailchimp distribution mechanism. Nevertheless, in not a single instance has
23 Petitioner explicitly asked any of the BIDs I represent, or that have consulted me
24 about pending requests, including Respondent, for Mailchimp "emails," whether in
25 an original written Public Records request or in any follow-up inquiry as to the
26 completeness of a response (of which there have been many). Nor has this
27 Mailchimp "email" issue arisen in any of the three other Public Record Act
28 litigations commenced by Mr. Riskin in which I have been involved and each of

1 which mainly concerned his contention that the email production was incomplete.
2 The first time Petitioner ever mentioned the word “Mailchimp” to me in any
3 context at all, let alone in respect of responsive “emails,” was via his counsel during
4 the deposition of Respondent’s witness in this case. And it never has passed
5 Petitioner’s lips or keyboard in a single subsequent request or follow-up in which I
6 have been involved.

7 8. Attached as Exhibit B is a true copy of my email to Petitioner’s counsel
8 providing the Mailchimp records to which Respondent has access and explaining
9 why no additional records were found in response to the first of Petitioner’s subject
10 requests. The email contains links to Respondent’s announcements sent by
11 Mailchimp, and true copies of a sample of such an announcement (clearly not an
12 email) and of one of the several spreadsheets sent with lists of Mailchimp
13 recipients. This response to the Writ has not been challenged by Petitioner in any
14 respect.

15 9. Neither Petitioner nor his counsel has been shy about questioning—
16 outside of litigation—the responses of other BIDs I represent in terms of timeliness,
17 completeness of responses, or exemptions claimed. As in the cases of the agreed
18 response-time amendment noted above, I always have attempted to avoid litigation
19 when possible. I would have done the same in respect of the response-time
20 amendment agreement, exemption withdrawal, un-redacted record re-production,
21 and Mailchimp record production at issue in this case had any of those issues been
22 raised by Petitioner or his counsel prior to the filing of the Petition.

23 10. Petitioner’s offer to settle the attorney fee motion was made well before
24 Respondent had completed its obligations under the Writ—which then resulted in
25 no additional records being produced save for the Mailchimp records, which clearly
26 are not even “emails.” Petitioner’s counsel made it clear that the minimal offer
27 Respondent might be willing to make as a result would not be acceptable.
28

1 11. I am a 1981 cum laude graduate of the University of Minnesota Law
2 School, where I was a member of the Law Review and did legal clinic work for
3 state prisoners. I passed the California Bar in the fall of 1981, and began practicing
4 business litigation as an associate at Gibson Dunn & Crutcher in Los Angeles. I
5 was made partner in 1989, and for two years was the firm's youngest partner. I had
6 tried nearly twenty cases to state and federal juries, judges, and arbitration tribunals
7 by the time I left that firm in 1996 to become a partner at what was then known as
8 Alschuler Grossman & Pines (and later Alschuler Grossman Stein & Kahan), also
9 in Los Angeles. I headed that firm's Intellectual Property department and tried
10 several more cases at that firm before leaving in 2007 to practice on my own in
11 Hollywood. I have continued to try cases in my solo practice. I have been ranked
12 as one of "America's Best lawyers" since 2007, and a Southern California "Super
13 Lawyer" from the inception of that designation in 2004.

14 12. My experience and the quality of my advocacy led to my past-
15 presidencies of the Century City Bar Association and the Association of Business
16 Trial lawyers (Los Angeles), in which positions I have worked closely with state
17 and federal legislators, including with respect to the development of court rules. I
18 am active in Hollywood, where I served two terms as Chair of the Chamber of
19 Commerce and represent several Business Improvement Districts and a number of
20 other non-profit enterprises in matters of public interest.

21 13. My usual rate for commercial litigation is \$500/hour, but I charge
22 Respondent and other public interest and non-profit entities much less: My hourly
23 rate for the present action is \$250 in light of Respondent's limited budget. Like
24 Petitioner's counsel, I am a solo practitioner without significant associate,
25 paralegal, or even secretarial support who can take on tasks at a lesser rate for non-
26 profit and public interest clients—all the work is my own. Yet my rate is a third of
27 the rate Petitioner's counsel seeks. And my client overwhelmingly prevailed in this
28 action.

1 I declare under penalty of perjury that the foregoing is true and correct
2 of my personal knowledge, that I am competent to so testify, and that this
3 Declaration is executed this 12th day of April, 2020, at Thousand Oaks, California.
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6 /Jeffrey C. Briggs/

7 Jeffrey C. Briggs
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RESPONDENT'S OPPOSITION TO PETITIONER'S MOTION FOR AWARD
OF ATTORNEY'S FEES AND COSTS; SUPPORTING DECLARATION OF
JEFFREY BRIGGS

I declare that I am a member of the bar of this court
at whose direction the service was made.

Executed on this 13th day of April, 2020, at Thousand Oaks, California.

Jeffrey C. Briggs